NO. 80-5427

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

DANIEL C. ROBERTS,

Appellant,

VS.

C. W. McCOY, THE CITY OF DALLAS, DON CLEVELAND AND GEORGE SCHRADER,

Appellees.

On Appeal from the United States Court of Appeals for the Fifth Circuit

MOTION TO DISMISS OR AFFIRM

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TO THE HONORABLE JUSTICES OF SAID COURT:

C. W. McCoy, the City of Dallas, Don Cleveland and George Schrader, the appellees, respectfully move the Court to dismiss this appeal or to affirm the judgment of the court of appeals, for the reason that the questions on which the appeal is predicated are so

unsubstantial as not to need further argument.

STATEMENT OF THE NATURE OF THE CASE

This is a civil rights case in which a public employee contended that he was discharged in violation of his right of free speech after he publicly accused his immediate supervisor of criminal misconduct.

PROCEEDINGS IN THE COURTS BELOW

This action was tried by the district court without a jury. Findings of fact and conclusions of law were made by the court and judgment was rendered against the employee. The employee appealed that judgment to the Court of Appeals for the Fifth Circuit. The court of appeals summarily dismissed that appeal. Roberts v. McCoy, 621 F.2d 439 (Table) (5th Cir. 1980).

STATEMENT OF FACTS

The appellant did not order a transcript of the proceedings in the district court, did not serve on the appellees the statement of issues

required by Fed.R.App.P. 10(b)(3) and did not seek an agreed statement pursuant to Fed.R.App.P. 10(d). The only facts before the court of appeals were those stated by the district court in its findings of fact.

SUMMARY OF ARGUMENT

The appellant did not challenge any finding, conclusion, or evidentiary or procedural ruling of the district court and the court of appeals correctly dismissed the appeal.

ARGUMENT

The appellant did not challenge any finding or conclusion of the district court, and the appeal properly was dismissed. See Fed.R.Civ.P. 52(a); Fed.R.App.P. 28(a)(4); Chicago and Western Indiana R. Co. v. Motorship Buko Maru, 505 F.2d 579, 581 (7th Cir. 1974); and Holt v. Sarver, 442 F.2d 304, 307 (8th Cir. 1971). The appellant does not contend that the court of appeals erred.

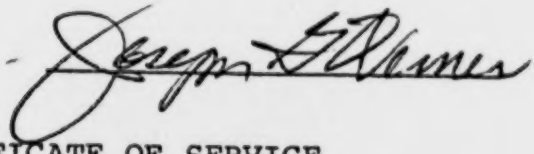
CONCLUSION AND PRAYER

The appellant did not raise any issue for determination by the court of

appeals and the appeal properly was dismissed. No error of the court of appeals has been alleged by the appellant, and the decision of the court of appeals should be affirmed or this appeal dismissed.

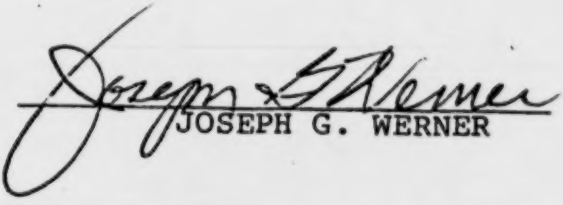
Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing brief was served by mail on Daniel C. Roberts, appellant pro se, on the 17th day of October, 1980.



JOSEPH G. WERNER

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